

# HOUSE . . . . . No. 2848

By Mr. O'Brien of Kingston, petition of Thomas J. O'Brien and others for legislation to make certain changes in the law relative to the authority of the Disabled Persons Protection Commission. Public Health.

## The Commonwealth of Massachusetts

### PETITION OF:

Thomas J. O'Brien	Paul J. Donato
Bradley H. Jones, Jr.	Bruce J. Ayers
Christopher G. Fallon	Vinny deMacedo
Richard R. Tisei	

In the Year Two Thousand and Five.

### AN ACT RELATIVE TO THE AUTHORITY OF THE DISABLED PERSONS PROTECTION COMMISSION.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. Section 1 of chapter 19C of the General Laws, as  
2 appearing in the 2002 Official Edition, is hereby amended as  
3 follows:—

4 By striking out the first paragraph as so appearing on lines 1  
5 and 2, and inserting in place thereof the following words:—

6 For the sole purposes of this chapter, the following words shall,  
7 unless the context requires otherwise, have the following mean-  
8 ings:—

9 Said Section 1 is further amended by striking out the words  
10 “chapter one hundred and twenty-three” as so appearing in the  
11 definition of “Disabled person” on lines 16 and 17, and inserting  
12 in place thereof the following:—

13 chapter one hundred and twenty-three B —

14 Said Section 1 is further amended by striking out the definition  
15 of “General counsel” or “counsel” as so appearing on lines 20 and  
16 21

17 Said Section 1 is further amended by amending the definition  
18 of “Reportable condition” by striking out the words “including  
19 unconsented to sexual activity.” as so appearing on line 42 and  
20 inserting in place thereof the following:—  
21 . . . , including but not limited to, un-assented to sexual  
22 activity.

1 SECTION 2. Section 3 of chapter 19C of the General Laws, as  
2 appearing in the 2002 Official Edition, is hereby amended as  
3 follows:

4 By amending subsection (d) of said section 3 by deleting the  
5 word “other” after the word “designate” and before the words  
6 “state agencies” as so appearing on line 20

7 Said Section 3 is further amended by striking out subsection (h)  
8 of said section 3 as so appearing on lines 31 through 35 and  
9 inserting in place thereof the following:—

10 (h) to develop, in consultation with the secretary of the execu-  
11 tive office of health and human services, standards for referral of  
12 investigations to the agencies within the executive office of health  
13 and human services pursuant to section four.

1 SECTION 3. Section 4 of chapter 19C of the General Laws as  
2 appearing in the 2002 Official Edition, is hereby amended as  
3 follows:

4 By amending the first sentence as so appearing on lines 1 and 2  
5 by inserting following the words “disabled person,” and before the  
6 words “the commission shall:” the following:—

7 . . . and subject to the commission’s authority to conduct its  
8 own investigation

9 Said section 4 is further amended by amending subsection (b)  
10 of said section 4 by striking out the first sentence of said subsec-  
11 tion (b) as so appearing on lines 10 through 16 and inserting in  
12 place thereof the following:—

13 . . . refer immediately any such reports, which allege the occur-  
14 rence of abuse to a disabled person whose caretaker is an agency  
15 of the commonwealth, a facility licensed by an agency of the com-  
16 monwealth or a private agency which provides services or treat-  
17 ment to disabled persons pursuant to a contract or agreement with  
18 an agency of the commonwealth, to an investigator of the com-

19 mission or to the department within the executive office of health  
20 and human services which has jurisdiction over the disability  
21 manifested by the disabled person.

22 Said section 4 is further amended by amending subsection (c)  
23 of said section 4 by striking out the first paragraph of said subsec-  
24 tion (c) as so appearing on lines 25 through 33 and inserting in  
25 place thereof the following:—

26 (c) refer immediately any such reports which allege the occur-  
27 rence of abuse of a disabled person whose caretaker is other than  
28 an agency of the commonwealth, a facility licensed by an agency  
29 of the commonwealth or a private agency which provides services  
30 or treatment to disabled persons pursuant to a contract or agree-  
31 ment with an agency of the commonwealth to the commission; the  
32 department of mental health in those cases where the disabled  
33 person is suffering from a mental illness, the department of mental  
34 retardation where the disabled person is a person with mental  
35 retardation, or to the Massachusetts rehabilitation commission  
36 where the disabled person is otherwise physically disabled. Upon  
37 such referral, the commission or said department shall immedi-  
38 ately designate an investigator who shall investigate such allega-  
39 tion of abuse as provided in section five.

40 Said Section 4 is further amended by adding immediately after  
41 subsection (c) of said Section 4 the following language:—

42 (d) In every case in which an investigation is conducted pur-  
43 suant to section 4(b) or section 4(c) of chapter 19C and the  
44 alleged victim is at risk of harm, the appropriate protective service  
45 agency as designated by the commission shall make reasonable  
46 efforts to alleviate the risk of further harm by providing protective  
47 services not later than the initiation of said investigation to insure  
48 the safety of the disabled person. In conducting such investiga-  
49 tion, the designated investigator may seek and utilize the assis-  
50 tance of municipal and state police. If during said investigation,  
51 access to the disabled person is denied to the designated investi-  
52 gator, an appropriate municipal or state police officer shall, upon  
53 request, accompany the designated investigator to gain access to  
54 the disabled person.

55 Said Section 4 is further amended by striking out the last para-  
56 graph of said subsection (c) as so appearing on lines 34 through  
57 66 and inserting in place thereof the following:—

58 (e) Upon receipt of a written determination and evaluation pre-  
59 pared and forwarded to the commission pursuant to the provisions  
60 of section 5 or upon receipt of a report of abuse of a disabled  
61 person where the commission, in accordance with written stan-  
62 dards established by the commission, determines that the report  
63 may contain allegations of criminal conduct, including but not  
64 limited to (1) a disabled person has been sexually abused or raped,  
65 or assaulted or battered as set forth in chapter two hundred and  
66 sixty-five; (2) a disabled person has suffered brain injury, loss or  
67 substantial impairment of a bodily function or organ, or substan-  
68 tial disfigurement; or (3) a disabled person has suffered a serious  
69 bodily injury as a result of a pattern of repetitive actions or inac-  
70 tions by a caretaker; the commission, notwithstanding any provi-  
71 sion of chapter sixty-six A regarding personal data to the contrary,  
72 shall immediately refer such report to the special investigative  
73 unit, established pursuant to section 3(i) of chapter 19C, which  
74 shall conduct an initial evaluation and investigation of the alleged  
75 criminal conduct. Upon completion of such evaluation and inves-  
76 tigation, said special investigative unit shall report the results of  
77 such evaluation and investigation to the commissioners who,  
78 notwithstanding any provision of chapter sixty-six A regarding  
79 personal data to the contrary, shall, if the special investigative unit  
80 has determined that there is reason to believe that a criminal  
81 offense has been committed, immediately refer such report,  
82 together with any relevant information obtained in such initial  
83 investigation, to the attorney general or district attorney for the  
84 county wherein the alleged criminal offense occurred. Upon  
85 receipt of such report, the attorney general or district attorney for  
86 the county wherein the alleged criminal offense occurred shall  
87 contact the commission in order to coordinate the investigation of  
88 the matters giving rise to the report. As part of such coordination,  
89 the attorney general or the district attorney may request that the  
90 commission delay or defer the investigation of the non-criminal  
91 matters giving rise to the report; provided, however, that such  
92 request shall be granted only where the commission determines  
93 that the health and the safety of the alleged victim of abuse shall  
94 not be adversely affected thereby and that the commission's or  
95 department's ability to conduct a later investigation shall not be  
96 unreasonably impaired by such delay or deferral. In all cases

97 including, but not limited to, those in which the commission  
98 agrees to delay or defer the non-criminal investigation, the  
99 attorney general or district attorney shall keep the commission  
100 informed of the status of the criminal investigation and the com-  
101 mission shall provide to the attorney general or the district  
102 attorney any and all information that may be relevant to the crim-  
103 inal investigation. In cases in which the commission agrees to  
104 delay or defer the non-criminal investigation, it shall monitor the  
105 progress of the criminal investigation and shall determine, after  
106 consultation with the appropriate law enforcement agencies, when  
107 or whether the non-criminal investigation should be initiated or  
108 resumed.

109 No person providing notification or information to the commis-  
110 sion, the commission's special investigative unit, the district  
111 attorney, or attorney general or providing testimony in court in  
112 furtherance of the provisions of this section shall be liable in any  
113 civil or criminal action by reason of such action.

1 SECTION 4. Section 5 of chapter 19C of the General Laws as  
2 appearing in the 2002 Official Edition, is hereby amended as  
3 follows:

4 The first sentence as so appearing on lines 1 through 4, shall be  
5 amended by deleting the words "the general counsel," and by fur-  
6 ther striking out the words "executive office of human services"  
7 and inserting in place thereof the words " executive office of  
8 health and human services"

9 Subsection (1) of said section 5, as so appearing, is hereby  
10 amended by striking out on lines 7 and 8 the words "counsel or  
11 department of mental health or the department of public health"  
12 and inserting in place thereof the words:—

13 the department of mental health, the department of mental  
14 retardation or the Massachusetts rehabilitation commission.

15 Said subsection (1) of said section 5 as so appearing, is hereby  
16 further amended by striking out on lines 16 and 18 the words "to  
17 the general counsel and to the department of mental health and the  
18 department of public health" and inserting in place thereof the  
19 words:—

20 and to the department of mental health, the department of  
21 mental retardation or the Massachusetts rehabilitation commis-  
22 sion, as appropriate.

23 Subsection (3) of said section 5, as so appearing, is hereby  
24 amended by striking out the words “the general counsel, the  
25 department of mental health and the department of public health”  
26 as appearing on lines 42 and 43 and inserting in place thereof the  
27 words:—

28 and the department of mental health, the department of mental  
29 retardation or the Massachusetts rehabilitation commission, as  
30 appropriate.

31 Subsection (4) of said section 5 is hereby amended by striking  
32 out said subsection (4), as so appearing, and inserting thereof the  
33 following:—

34 (4) If there is a reasonable suspicion based upon known facts  
35 that a disabled person has died as a result of abuse, immediately  
36 report said death to the commission, the attorney general, the dis-  
37 trict attorney for the county in which such death occurred, and to  
38 the medical examiner as required by section six of chapter thirty-  
39 eight.

40 Subsection (5) of said section 5, as so appearing, is hereby  
41 amended; by deleting the second and third paragraphs thereof as  
42 so appearing on lines 59 through 77.

1 SECTION 5. Section 6 of chapter 19C of the General Laws as  
2 appearing in the 2002 Official Edition, is hereby amended by  
3 striking out the first paragraph as so appearing on lines 1 through  
4 9 and inserting in place thereof the following:—

5 Acting through state agencies within the executive office of  
6 health and human services designated by the commission for the  
7 purpose of providing protective services as necessary to prevent  
8 further abuse in cases investigated pursuant to this chapter and  
9 subject to the oversight of the commission, the commission shall:

1 SECTION 6. Section 7 of chapter 19C of the General Laws as  
2 appearing in the 2002 Official Edition, is hereby amended as  
3 follows:—

4 Subsection (a) of said section 7, as so appearing, is hereby  
5 amended by striking out the words “the general counsel, depart-  
6 ment of mental health or the department of public health” as so  
7 appearing on lines 1 and 2, and inserting in place thereof the  
8 words:—

9 the department of mental health, the department mental retarda-  
10 tion or the Massachusetts rehabilitation commission.

11 Subsection (a) of said section 7, as so appearing, is hereby fur-  
12 ther amended by deleting the word “counsel, “ as so appearing on  
13 line 5.

14 Subsection (b) of said section 7, as so appearing, is hereby  
15 amended by deleting the words “counsel or” as so appearing on  
16 line 31 and on line 35,

17 Subsection (b) of said section 7, as so appearing, is hereby fur-  
18 ther amended by striking out the phrase “. . . the court may order  
19 the provision of protective services on an emergency basis. . .” as  
20 appearing on lines 46 and 47 and inserting in its stead the  
21 following words:—

22 and no other person who is authorized to consent is available or  
23 willing to consent, the court may order protective services on an  
24 emergency basis and the court in ordering the provision of protec-  
25 tive services on an emergency basis may appoint a conservator,  
26 guardian or other person authorized to consent to the provision of  
27 protective services; provided however, that the court shall estab-  
28 lish the least restrictive fiduciary representation that will satisfy  
29 addressing the emergency and needs of such disabled person.

30 Subsection (b) of said Section 7, as so appearing, is hereby fur-  
31 ther amended by striking out the words “Said order may be  
32 extended for an additional seventy-two hour period if the court  
33 finds that such extension is necessary to remove the emergency”  
34 as so appearing on lines 51 through 53 and inserting in its stead  
35 the following words:—

36 Said order may be extended for an additional period of time if  
37 the court finds that such extension is necessary to remove the  
38 emergency or to address the needs of such disabled person.

39 Subsection (c) of said section 7 is hereby amended by deleting  
40 on line 58 the word “counsel”

1 SECTION 7. Section 8 of chapter 19C of the General Laws as  
2 appearing in the 2002 Official Edition, is hereby amended by  
3 striking out the words “. . . whose caretaker is a state agency”, as  
4 so appearing on lines 2 and 6, and inserting in place thereof the  
5 words:

6 . . . whose caretaker is an agency of the commonwealth, a  
7 facility licensed by an agency of the commonwealth or a private  
8 agency which provides services or treatment to disabled persons  
9 pursuant to a contract or agreement with an agency of the com-  
10 monwealth

1 SECTION 8. Section 9 of chapter 19C, as appearing in the  
2 2002 Official Edition, is hereby amended as follows:—

3 By striking out line 1 and line 2, as so appearing, and inserting  
4 in place thereof the words:—

5 Upon completion of any investigation conducted pursuant to  
6 this chapter, including but not limited to a formal investigation  
7 conducted pursuant to section eight, and notwithstanding any pro-  
8 vision of chapter sixty-six A regarding personal data to the con-  
9 trary, the commission shall:

10 Section 9 of said chapter 19C, as so appearing, is hereby further  
11 amended by adding the following subsection after subsection (d)  
12 of said Section 9 of said chapter 19C:—

13 (e) refer any matters for which there is reason to believe that  
14 professional misconduct has occurred to the agency of the com-  
15 monwealth having jurisdiction over such professional conduct for  
16 possible imposition of disciplinary measures in accordance with  
17 the requirements of any applicable law or regulation.

1 SECTION 9. Section 10 of chapter 19C, as appearing in the  
2 2002 Official Edition, is hereby amended as follows:—

3 By striking out as so appearing on line 6, the following  
4 words:—

5 “who have reasonable cause to believe” and inserting in place  
6 thereof the following:—

7 who have a reasonable suspicion based upon known facts

8 Said Section 10 of chapter 19C is hereby further amended as  
9 follows:—

10 By striking out as so appearing on line 11 and line 12, the  
11 following words:—

12 “has reasonable cause to believe” and inserting in place thereof  
13 the following:—

14 has a reasonable suspicion based upon known facts



1     SECTION 10. Section 13 of chapter 19C, as appearing in the  
2     2002 Official Edition, is hereby amended by striking out as so  
3     appearing on line 1 through line 3 the following words:—

4     “whose caretaker was a state agency or an agency of any subdi-  
5     vision of the commonwealth or a private agency contracting with  
6     the commonwealth” and inserting in place thereof the  
7     following:—

8     whose caretaker is an agency of the commonwealth, a subdivi-  
9     sion of the commonwealth, a facility licensed by an agency of the  
10    commonwealth or a private agency which provides services or  
11    treatment to disabled persons pursuant to a contract or agreement  
12    with an agency of the commonwealth.